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இணைப்பு. II

(26ஆம் பக்கத்தில் இனம் 4 (1) க்கான அடிக்குறிப்பைக் காண்க)

L. A. Bill No. 38/1975.

(As passed by the Assembly)

A Bill to provide for the acquisition in the public interest, of the undertaking of the Sakthi Pipes Limited, and for matters connected therewith.

WHEREAS it is expedient in the public interest that the undertaking of the Sakthi Pipes Limited, shall be acquired for the purpose of enabling the Government to conserve and exploit, in a scientific and rational manner, to the maximum advantage of the State and in the interest of the community, the production and supply of the goods by the company, and for matters connected therewith or incidental thereto;

BE it enacted by the Legislature of the State of Tamil Nadu in the Twenty-sixth Year of the Republic of India as follows:—

CHAPTER I.

PRELIMINARY.

1. *Short title.*—This Act may be called the Sakthi Pipes Limited (Acquisition of Undertaking) Act, 1975.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “appointed day” means the date of publication of this Act in the *Tamil Nadu Government Gazette*;

(b) “Commissioner” means the Commissioner of Payments appointed under section 12;

(c) “company” means the Sakthi Pipes Limited being a company incorporated under the Companies Act, 1956 (Central Act I of 1956), having its registered office in this State;

(d) “date of management” means the 19th December 1972, the date on which the management of the undertaking was taken over by the Government;

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(e) "Government" means the State Government;

(f) "Government company" means the Tamil Nadu Pipes, Limited, being a Government company within the meaning of section 617 of the Companies Act, 1956 (Central Act I of 1956);

(g) "owner" when used in relation to the undertaking means any person or firm who or which is, immediately before the appointed day the immediate proprietor or lessee or occupier of the undertaking or any part thereof, and also includes any agent or manager of such owner but does not include any person or body of persons authorised to take over the management of the whole or any part of the undertaking.

(h) "specified date" means such date as the Government may for the purpose of any provision of this Act, by notification, specify and different dates may be specified for different provisions of this Act;

(i) "undertaking" means an undertaking of the company—

(i) engaged in the business of manufacturing and dealing in the cast iron pipes and other goods; or

(ii) carrying on other activities with a view to achieve the objects specified in clause III of the Memorandum of Association of the Company; or

(iii) transacting anything incidental or ancillary to the matters mentioned in item (i) or (ii).

CHAPTER II.

ACQUISITION OF THE RIGHTS OF THE OWNER OF THE UNDERTAKING.

3. *Acquisition of rights of the owner in respect of the undertaking.*—(1) On the appointed day, the undertaking and the right, title and interest of the owner in relation to such undertaking shall stand transferred to, and shall vest absolutely in the Government.

(2) The undertaking which stands vested in the Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in the Government company.

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4. *General effect of vesting.*—(1) The undertaking referred to in section 3 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the owner of the undertaking whether within or outside India, and all books of account, registers, and all other documents of whatever nature relating thereto, and shall also be deemed to include all the liabilities and obligations specified in sub-section (2) of section 5.

(2) All property as aforesaid which have vested in the Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and other encumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3) Where any licence or other instrument in relation to the undertaking had been granted at any time before the appointed day to the owner by the Central Government or a State Government or any other authority, the Government company shall, on and from such date, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or other instrument had been granted to it and shall hold such licence or other instrument for the remainder of the period for which the company would have held such licence or other instrument.

(4) Every mortgage of any property which has vested under this Act in the Government and every person holding any charge, lien, or other interest in or in relation to any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(5) For the the removal of doubts, it is hereby declared that the mortgage of any property referred to in sub-section (2) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests payment of the mortgage

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money or other dues, in whole or in part, out of the amount specified in relation to such property, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Government.

(6) If, on the appointed day any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 5 in respect of the undertaking instituted or preferred by or against the company, is pending. the same shall not abate, be discontinued or be, in any way prejudicially affected by reason of the transfer of the undertaking or of anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Government company.

5. *Owner to be liable for certain prior liabilities.*—(1) Every liability, other than the liability specified in sub-section (2), of the owner of the undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Government or the Government company.

(2) Any liability arising in respect of—

(a) loans advanced by the Central Government, or a State Government, or both, to the undertaking (together with interest due thereon) after the date of management; and

(b) wages, salaries and other dues of employees of the undertaking, in respect of any period whether before or after the date of management, shall, on and from the appointed day, be the liability of the Government and shall be discharged, for and on behalf of the Government, by the Government company as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubt, it is hereby declared that,—

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2), in relation to the undertaking in respect of any period prior to the appointed day, shall be enforceable against the Government or the Government company;

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(b) no award, decree or order of any court, tribunal or other authority in relation to the undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in sub-section (2), which arose before that day, shall be enforceable against the Government or the Government company;

(c) no liability of the undertaking or the owner thereof for the contravention, before the appointed day, of any provision of law, for the time being in force, shall be enforceable against the Government or the Government company.

CHAPTER III.

PAYMENT OF AMOUNT.

6. *Payment of amount to the owner of the undertaking.*—The owner of the undertaking shall be given by the Government in cash and in the manner specified in Chapter VI, for the transfer to, and vesting in it under sub-section (1) of section 3, of such undertaking and the right, title and interest of the owner in relation to such undertaking an amount of rupees one crore ninety-five lakhs and sixty-four thousand only.

7. *Payment of interest.*—(1) In addition to the amount referred to in section 6 there shall be given by the Government in cash to the owner of the undertaking simple interest at the rate of four per cent per annum on the amount of each instalment referred to in sub-section (1) of section 13 and such interest shall be calculated for the period commencing on the appointed day and ending with the date of payment to the Commissioner.

(2) The amount representing interest calculated at the rate specified in sub-section (1) shall be given in addition to the amount specified in section 6.

CHAPTER IV.

MANAGEMENT, ETC., OF THE UNDERTAKING.

8. *Management, etc., of the undertaking.*—The Government company or any person which that company may, by order in writing, specify, shall be entitled to exercise the powers of general

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superintendence, direction, control and management of the affairs and business of the undertaking, the right, title and interest of the owner in relation to which have vested in that company under sub-section (2) of section 3, and do all such things as the owner of the undertaking is authorised to exercise and do.

9. *Duty of persons in charge of management of the undertaking to deliver all assets, etc.*—On the vesting of the undertaking in the Government company, all persons in charge of the management of such undertaking immediately before such vesting shall be bound to deliver to the Government company all assets, books of account, registers or other documents in their custody relating to the undertaking.

CHAPTER V.

PROVISIONS RELATING TO EMPLOYEES OF THE UNDERTAKING.

10. *Employment of certain employees to continue.*—(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), and has been, immediately before the appointed day, employed in the undertaking shall become, on and from the appointed day, an employee of the Government company, and shall hold office or service in the Government company with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him, if the rights in relation to such undertaking had not been transferred to and vested in, the Government company, and shall continue to do so unless and until his employment in the Government company is duly terminated or until his remuneration, terms and condition of employment are duly altered by the Government company.

(2) Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) and who has been immediately before the appointed day, employed in the undertaking shall in so far as such person is employed in connection with the undertaking which has vested in the Government company, become, as from the appointed day, an employee of the Government company and shall hold his office or service therein by the same tenure, at the same remuneration and upon

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the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the undertaking if it had not vested in the Government company and shall continue to do so unless and until his employment in the Government company is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Government company.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act XIV of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other person employed in the undertaking to the Government company shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the Government company by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being payment by way of gratuity or pension, such person may, except to the extent such liability has been taken over by the Government under section 5, enforce his claim against the owner of the undertaking but not against the Government or the Government company.

11. *Provident and other funds.*—(1) Where the owner of the undertaking has established a provident fund, superannuation, welfare or other fund for the benefit of the persons employed in the undertaking, the moneys relatable to the employees, whose services have become transferred by or under this Act to the Government company shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred, to and shall vest in the Government company.

(2) The moneys which stand transferred, under sub-section (1), to the Government company shall be dealt with by that company in such manner as may be prescribed.

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CHAPTER VI.

COMMISSIONER OF PAYMENTS.

12. *Appointment of Commissioner of Payments.*—(1) For the purpose of disbursing the amounts payable to the owner, the Government shall, by notification in the *Tamil Nadu Government Gazette*, appoint such person as it may think fit to be the Commissioner of Payments.

(2) The Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act, and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any powers may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of the State.

13. *Payment by the Government to the Commissioner.*—(1) (a) The Government shall pay in cash to the Commissioner, for payment to the owner of the undertaking, an amount of rupees one crore ninety five lakhs and sixty-four thousand only in three equal annual instalments together with interest accrued under sub-section (1) of section 7.

(b) The first of the three equal annual instalments referred to in clause (a) together with interest thereon shall be paid within thirty days from the specified date.

(2) A deposit account shall be opened by the Government, in favour of the Commissioner, in the Public Account of the State and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account in the Public Account of the State and thereafter the said deposit account shall be operated by the Commissioner.

Records shall be maintained by the Commissioner in respect of the undertaking in relation to which payments have been made to him under this Act.

(4) Interest accruing on the amount standing to the credit of the deposit account referred to in sub-section (2) shall inure to the benefit of the owner of the undertaking.

14. *Certain powers of the Government company.*—(1) The Government company shall be entitled to receive, to the exclusion of all other persons, any money due to the undertaking, realised after the appointed day, notwithstanding that the realisations pertain to a period prior to the appointed day.

(2) Save as otherwise provided in this Act, the liabilities in relation to the undertaking in respect of any period prior to the appointed day which have not been discharged by the company shall be the liabilities of the owner of the undertaking.

15. *Claims to be made to the Commissioner.*—Every person having a claim against the owner of the undertaking shall prefer such claim before the Commissioner within thirty days from the specified date :

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days but not thereafter.

16. *Priority of claims.*—The claims arising out of the matter specified in the Schedule shall have priorities in accordance with the following principles, namely :—

(a) category I will have precedence over all other categories and category II will have precedence over category III and so on;

(b) the claims specified in each of the categories, except category III shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) the liabilities specified in category III shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority, *inter se*, of such loans; and

(d) the question of payment of a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

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17. *Examination of claims.*—(1) On receipt of the claims under section 15, the Commissioner shall arrange the claims in the order of priority specified in the Schedule and examine the same in accordance with the said order.

(2) If on examination of the claims, the Commissioner is of the opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the liabilities in respect of such lower category.

18. *Admission or rejection of claims.*—(1) After examining the claims with reference to the priority set out in the Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the disbursement made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in the English language and one issue of the daily newspaper in Tamil and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the owner of the undertaking an opportunity of refuting the claim and after giving the claimants a reasonable opportunity of being heard in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions including the place or places at which he shall hold his sittings and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act V of 1908), while trying a suit, in respect of the following matters, namely :—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits; and

(d) the issuing of any commission for the examination of witnesses.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act XIV of 1860) and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the undertaking is situated:

Provided that where a person who is a Judge of the High Court is appointed to be the Commissioner, such appeal shall lie to the High Court and such appeal shall be heard and disposed of by not less than two Judges of the High Court.

19. Disbursement of money by the Commissioner to claimants.—After admitting a claim under this Act, the amount due in respect of such claim shall be credited by the Commissioner to the relevant fund or be paid to the person or persons to whom such sums are due in three equal annual instalments and on such credit or payment, the liability of the owner in respect of such claim shall stand discharged.

20. Disbursement of amount to the owner.—(1) If out of the moneys paid to the owner in relation to the undertaking there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the owner of the undertaking.

(2) Before making any payment to the owner under subsection (1) the Commissioner shall satisfy himself as to the rights of such person to receive the whole or any part of such amount and in the event of there being a doubt or dispute as to the right of the person to receive the whole or any part of the amount referred

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to in sections 6 and 7, the Commissioner shall refer the matter to the court and make the disbursement in accordance with the decisions of the court.

(3) Where any machinery, equipment or other property in the undertaking has vested in the Government company, but such machinery, equipment or other property does not belong to the owner of such undertaking, the amount specified in sections 6 and 13 shall, on a reference made to it by the Commissioner, be apportioned by the court between the owner of the undertaking and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.

Explanation.—In this section, “Court”, in relation to the undertaking, means the principal civil court of original jurisdiction within the local limits of whose jurisdiction the undertaking is situated.

21. *Undisbursed or unclaimed amounts to be deposited to the general revenue account.*—Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made shall be transferred by the Commissioner to the general revenue account of the Government, but a claim to any money so transferred may be preferred to the Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of revenue.

CHAPTER VII.

MISCELLANEOUS.

22. *Assumption of liability.*—(1) Where any liability of the owner of the undertaking arising out of any item specified in category I of the Schedule is not discharged fully by the Commissioner out of the amount paid to him under the Act, the Commissioner shall intimate in writing to the Government the extent of the liability which remains undischarged, and that liability shall be assumed by the Government.

(2) The Government may, by order, direct the Government company to take over any liability assumed by the Government.

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under sub-section (1), and on receipt of such direction, it shall be the duty of the Government company to discharge such liability.

23. *Act to over ride all other enactments.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or authority.

24. *Contracts to cease to have effect unless ratified by Government Company.*—(1) Every contract entered into by the owner or occupier of the undertaking for any service, sale or supply and in force immediately before the appointed day shall, on and from the expiry of one hundred and eighty days from such date, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the Government company and in ratifying such contract the Government company may, with the previous approval of the Government, make such alterations or modifications therein as it may think fit:

Provided that the Government company shall not omit to ratify a contract, and shall not make any alteration or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the undertaking.

(2) The Government company shall not omit to ratify a contract, and, shall not make any alteration or modification therein, except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.

25. *Penalties.*—Any person who,—

(a) having in his possession, custody or control any property forming part of the undertaking, wrongfully withholds such property from the Government or the Government company, or any person authorised by the Government or the Government company, as the case may be, in this behalf, or

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(b) wrongfully obtains possession of, or retains any property forming part of the undertaking or willfully withholds or fails to furnish to the Government, the Government company or any person specified by the Government or Government company, as the case may be, any document relating to such undertaking which may be in his possession, custody or control or fails to deliver to the Government company or any person specified by the Government company any assets, books of account, registers or other documents in his custody relating to the undertaking, or,

(c) wrongfully removes or destroys any property forming part of the undertaking or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to "ten thousand rupees, or with both".

26. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the Company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Explanation.—For the purposes of this section,—

(a) “ Company ” means any body corporate and includes a firm or other association of individuals; and

(b) “ Director ”, in relation to a firm, means a partner in the firm.

27. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or the Government company or any officer or other person authorised by the Government company for anything which is in good faith done or intended to be done under this Act.

28. *Delegation of powers.*—(1) The Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the power under section 29, may also be exercised by any person or persons as may be specified in the notification.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Government.

29. *Power to make rules.*—(1) The Government may make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the time within which and the manner in which an intimation referred to in sub-section (4) of section 4 shall be given;

(b) the manner in which moneys in any Provident or other fund referred to in section 11 shall be dealt with;

(c) any other matter which is required to be, or may be prescribed.

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(3) All rules made under this Act shall be published in the *Tamil Nadu Government Gazette*, and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(4) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are published.

(5) Every rule made or notification issued under this Act, shall, as soon as possible, after it is made or issued, be placed on the table of both Houses of the Legislature and if, before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

30. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

31. *Declaration as to the policy of the State.*—It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of Article 39 of the Constitution.

Explanation.—In this section, “ State ” has the same meaning as in Article 12 of the Constitution.

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THE SCHEDULE.

(See sections 16, 17, 18 and 22.)

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES
IN RESPECT OF THE UNDERTAKING.

PART A.

POST-TAKE-OVER MANAGEMENT PERIOD.

Category I—

- (a) Loans advanced by a Bank.
- (b) Loans advanced by an institution other than a Bank.
- (c) Any other loan.
- (d) Any credit availed of for purpose of trade or other manufacturing operations.

Category II—

- (a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.
- (b) Any other dues.

PART B.

PRE-TAKE-OVER MANAGEMENT PERIOD.

Category III—

Secured loans.

Category IV—

Revenue, taxes, cases, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

Category V—

- (a) Any credit availed of for purpose of trade or manufacturing operations.
- (b) Any other dues.